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January 10, 2017

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Dear Joe, Pat, and Anne,

On behalf of Big Ox Energy, LLC (Big Ox), Jon and I have been working closely with the team at Big Ox over the holidays to respond to the Information Requests that we received from EPA Region VII two days before Christmas. We respond herein to the Clean Air Act Section 114 Information Request, and incorporate by reference the introduction of our prior letter addressing



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the Clean Water Act Information Request, which discusses the factual background at issue in this matter.

**I. Clean Air Act Information Request**

The information provided here is the best information Big Ox has on hand at this time; Big Ox will determine whether there is any further information it can provide to answer EPA's questions.

a. Questions 1 and 2

The answers to EPA's Questions 1 and 2 can be found in the application for the Nebraska state Air Permit application (See Exhibit A).

b. Questions 3 through 6

A number of EPA's questions focus on the operation of the biogas (see numbers 3–6). Big Ox has complied with the State air permit conditions (summarized below) that relate to the operation of its biogas flare.

Enclosed is the Air Permit that was issued by the state of Nebraska in April 2016 and which authorized Big Ox to construct the anaerobic digester pursuant to certain conditions. (See Exhibit A). (Also enclosed is the air permit application and permit fact sheet). The primary focus of the state air permit and its operating conditions relate to the following emission units: (1) the digester biogas flare (EU06); and (2) the biogas cleanup skid system (EU07).

The only State air permit requirements that apply to these two sources establish maximum capacity-thresholds and a general requirement that "when biogas is being routed to EU06, a flame shall be present in the flare." The facility must install an appropriate safety device or flare



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monitoring system to ensure that biogas cannot be sent to the flare without the presence of a flame. Big Ox does have such a flare monitoring system that automatically shuts down delivery of gas to the flare whenever the flame is out. Big Ox has complied with its permit condition and monitors and records the hours of operation of EU06, and intends to provide information on its operational records.

These requirements are exclusively based on Chapter 17 of Title 129 of the Nebraska Administrative Code. This chapter is separate and independent from the federal Clean Air Act.

The state of Nebraska has regularly reviewed Big Ox's operations and determined that Big Ox has remained in compliance with all of the air permit terms that the state implements. In fact, as recently as November 1<sup>st</sup>, 2016, Todd Ellis (the section supervisor for Nebraska Air Quality Compliance) inspected Big Ox's operations and concluded that "DEQ had no observations of concern." The state DEQ understands and is satisfied that currently the gas being produced is burned in the biogas flare while production is being ramped up.

c. Question 7

Big Ox has never operated the biogas cleanup skid system. As part of the November 1<sup>st</sup> inspection, Big Ox explained to NDEQ that Big Ox had not yet started operating its gas-cleanup operations, which includes the cleanup skid system.

d. Questions 8 and 9

Big Ox is continuing to collect information on any emissions of anaerobic digestion biogas and emissions from tanker trucks.



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e. Questions 10 through 15

On our call, we expressed the legal and equitable concern that the state's air construction permit only identified two sources that were directly subject to U.S. EPA's regulations adopted under the federal Clean Air Act. The Clean Air Act states that air pollution prevention and control at its source is the primary responsibility of the state and local governments. We appreciate EPA's recognition that it would inappropriate to circumvent the state's ongoing and effective implementation of its unique air programs that are not delegated or part of the federal Clean Air Act.

In the issuance of Big Ox's air permit, NDEQ concluded that the federal NESHAP standards apply only to an emergency generator engine (EU08). The single other source that was identified as subject to a federal requirement is the paved roadway, which must be maintained to prevent fugitive dust from escaping. Other than these two sources, there is no indication whatsoever in the state air construction permit or the permit application and fact sheet that any other federal Clean Air Act standards apply. In particular, there is no discussion of application of Section 112(r) of the Clean Air Act, which mandates the prevention of accidental releases at facilities that process, handle or store hazardous air pollutants or extremely hazardous substances (above a certain expected threshold quantity). Notably, Big Ox does not meet the thresholds for entry into EPA's Risk Management Plan program—it does not store or process the necessary amounts of hydrogen sulfide or methane.

Based on questions 11 and 12 of the EPA Information Request, it appears that EPA is under the misassumption that Big Ox plans to store onsite both methane and hydrogen sulfide, in substantial quantity and for that reason EPA believes that the entire facility is subject to the "general duty" requirements in Section 112(r). In fact, neither methane nor hydrogen sulfide is stored onsite or is



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part of Big Ox's "intended inventory." We would like to work with you to better understand EPA's position on which document requests somehow relate to Section 112(r) and how we can most efficiently respond. Until we understand the basis for EPA's Section 112(r) authority, we do not think EPA is justified in asking for this information.

As part of our discussion, we request that EPA recognize that Big Ox and the state of Nebraska have reasonably relied on the conditions in Big Ox's air quality permit as setting forth the extent of all applicable state and federal air requirements. In fact, with regard to emissions of total reduced sulfur (TRS), the state permit incorporates and applies "a model prediction for projected emissions of TRS from both the biogas flare and the cleanup skid system." Those TRS "model predictions" were designed exclusively to implement the unique Nebraska TRS regulations. On our call, we both agreed that the state of Nebraska's unique TRS program is completely independent and separate from the federal Clean Air Act. If U.S. EPA had concerns about the emissions of hydrogen sulfide from Big Ox's operations, then it should have raised them during the state's solicitation of comments from EPA and other stakeholders on the proposed air construction permit for Big Ox.

\* \* \*

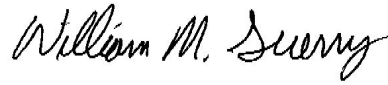
We are continuing our search for responsive information and expect to be able to provide you a timeline for a full response. We plan on certifying our answers to the EPA information request once we understand what information EPA needs and is entitled to, and once our response is complete. We would like to schedule a joint call with the EPA team to discuss the most effective and efficient response to the Information Request. In the meantime, please let us know if you have any questions. On behalf of Big Ox we look forward to working with you to address all EPA's issues and questions.



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Best regards,

A handwritten signature in black ink, reading "William M. Guerry". The signature is written in a cursive, flowing style with a large initial 'W'.

William M. Guerry  
Jonathan K. Cooperman